

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

vs.

No. CIV 23-274 MV/GJF

SANDIA TRANSPORTATION, L.L.C.,

Defendant.

**ORDER ADOPTING MAGISTRATE JUDGE'S
PROPOSED FINDINGS AND RECOMMENDED DISPOSITION**

THIS MATTER is before the Court on Defendant's Motion to Set Aside Default (“Motion”) (Doc. 12) and United States Magistrate Judge Gregory J. Fouratt’s Proposed Findings and Recommended Disposition (“PFRD”) (Doc. 16).

The PFRD “[found] good cause to set aside the clerk’s entry of default” and thus “recommend[ed] granting the Motion.” PFRD at 1, 7–10. The PFRD also recommended denying as moot Plaintiff’s Motion for Default Judgment (Doc. 9) and allowing Defendant to file its proposed Answer to Complaint (Doc 12-2). *Id.* at 11. Finally, the PFRD notified the parties of their ability to file objections within 14 days and warned them that the failure to file objections would waive appellate review. *Id.* The 14-day deadline has now expired without either party filing objections. Upon review of the record, the Court concurs with the PFRD.

The Tenth Circuit has held that “a party’s objections to the magistrate judge’s report and recommendation must be both timely and specific to preserve an issue for de novo review by the district court or for appellate review.” *U.S. v. One Parcel of Real Property*, 73 F.3d 1057, 1060 (10th Cir. 1996). The parties’ failure to timely object to the Magistrate Judge’s PFRD waives

appellate review of both factual and legal questions. *In re Key Energy Res. Inc.*, 230 F.3d 1197, 1199–1200 (10th Cir. 2000); *One Parcel of Real Property*, 73 F.3d at 1059.

IT IS THEREFORE ORDERED that:

- (1) The PFRD (Doc. 16) is **ADOPTED**;
- (2) Defendant's Motion to Set Aside Default (Doc. 12) is **GRANTED**;
- (3) The Clerk's Entry of Default (Doc. 10) is **VACATED**; and
- (4) Plaintiff's Motion for Default Judgment (Doc. 9) is **DENIED AS MOOT**.



HONORABLE MARTHA VÁZQUEZ
SENIOR UNITED STATES DISTRICT JUDGE